

Pt. 211

funds transfer and of the choice of law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system. The law of a jurisdiction selected pursuant to this subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.

(d) In the event of inconsistency between an agreement under subsection (b) and a choice-of-law rule under subsection (c), the agreement under subsection (b) prevails.

(e) If a funds transfer is made by use of more than one funds-transfer system and there is inconsistency between choice-of-law rules of the systems, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue.

[55 FR 40801, Oct. 5, 1990; 55 FR 47428, Nov. 13, 1990]

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

Subpart A—International Operations of U.S. Banking Organizations

Sec.

- 211.1 Authority, purpose, and scope.
- 211.2 Definitions.
- 211.3 Foreign branches of U.S. banking organizations.
- 211.4 Permissible investments and activities of foreign branches of member banks.
- 211.5 Edge and agreement corporations.
- 211.6 Permissible activities of Edge and agreement corporations in the United States.
- 211.7 Voluntary liquidation of Edge and agreement corporations.
- 211.8 Investments and activities abroad.
- 211.9 Investment procedures.
- 211.10 Permissible activities abroad.
- 211.11 Advisory opinions under Regulation K.
- 211.12 Lending limits and capital requirements.
- 211.13 Supervision and reporting.

Subpart B—Foreign Banking Organizations

- 211.20 Authority, purpose, and scope.
- 211.21 Definitions.
- 211.22 Interstate banking operations of foreign banking organizations.
- 211.23 Nonbanking activities of foreign banking organizations.
- 211.24 Approval of offices of foreign banks; procedures for applications; standards for

12 CFR Ch. II (1–1–05 Edition)

approval; representative office activities and standards for approval; preservation of existing authority.

- 211.25 Termination of offices of foreign banks.
- 211.26 Examination of offices and affiliates of foreign banks.
- 211.27 Disclosure of supervisory information to foreign supervisors.
- 211.28 Provisions applicable to branches and agencies: limitation on loans to one borrower.
- 211.29 Applications by state branches and state agencies to conduct activities not permissible for federal branches.
- 211.30 Criteria for evaluating the U.S. operations of foreign banks not subject to consolidated supervision.

Subpart C—Export Trading Companies

- 211.31 Authority, purpose, and scope.
- 211.32 Definitions.
- 211.33 Investments and extensions of credit.
- 211.34 Procedures for filing and processing notices.

Subpart D—International Lending Supervision

- 211.41 Authority, purpose, and scope.
- 211.42 Definitions.
- 211.43 Allocated transfer risk reserve.
- 211.44 Reporting and disclosure of international assets.
- 211.45 Accounting for fees on international loans.

INTERPRETATIONS

- 211.601 Status of certain offices for purposes of the International Banking Act restrictions on interstate banking operations.
- 211.602 Investments by United States banking organizations in foreign companies that transact business in the United States.
- 211.603 Commodity swap transactions.
- 211.604 Data processing activities.
- 211.605 Permissible underwriting activities of foreign banks.

AUTHORITY: 12 U.S.C. 221 *et seq.*, 1818, 1835a, 1841 *et seq.*, 3101 *et seq.*, and 3901 *et seq.*; 15 U.S.C. 6801 and 6805; 31 U.S.C. 5318.

Subpart A—International Operations of U.S. Banking Organizations

SOURCE: 66 FR 54374, Oct. 26, 2001, unless otherwise noted.

Federal Reserve System

§211.2

§211.1 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Board of Governors of the Federal Reserve System (Board) under the authority of the Federal Reserve Act (FRA) (12 U.S.C. 221 *et seq.*); the Bank Holding Company Act of 1956 (BHC Act) (12 U.S.C. 1841 *et seq.*); and the International Banking Act of 1978 (IBA) (12 U.S.C. 3101 *et seq.*).

(b) *Purpose.* This subpart sets out rules governing the international and foreign activities of U.S. banking organizations, including procedures for establishing foreign branches and Edge and agreement corporations to engage in international banking, and for investments in foreign organizations.

(c) *Scope.* This subpart applies to:

(1) Member banks with respect to their foreign branches and investments in foreign banks under section 25 of the FRA (12 U.S.C. 601-604a);¹ and

(2) Corporations organized under section 25A of the FRA (12 U.S.C. 611-631) (Edge corporations);

(3) Corporations having an agreement or undertaking with the Board under section 25 of the FRA (12 U.S.C. 601-604a) (agreement corporations); and

(4) Bank holding companies with respect to the exemption from the non-banking prohibitions of the BHC Act afforded by section 4(c)(13) of that act (12 U.S.C. 1843(c)(13)).

§211.2 Definitions.

Unless otherwise specified, for purposes of this subpart:

(a) An *affiliate* of an organization means:

(1) Any entity of which the organization is a direct or indirect subsidiary; or

(2) Any direct or indirect subsidiary of the organization or such entity.

(b) *Capital Adequacy Guidelines* means the “Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure” (12 CFR part 208, app. A) or the “Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure” (12 CFR part 225, app. A).

¹Section 25 of the FRA (12 U.S.C. 601-604a), which refers to national banking associations, also applies to state member banks of the Federal Reserve System by virtue of section 9 of the FRA (12 U.S.C. 321)

(c) *Capital and surplus* means, unless otherwise provided in this part:

(1) For organizations subject to the Capital Adequacy Guidelines:

(i) Tier 1 and tier 2 capital included in an organization's risk-based capital (under the Capital Adequacy Guidelines); and

(ii) The balance of allowance for loan and lease losses not included in an organization's tier 2 capital for calculation of risk-based capital, based on the organization's most recent consolidated Report of Condition and Income.

(2) For all other organizations, paid-in and unimpaired capital and surplus, and includes undivided profits but does not include the proceeds of capital notes or debentures.

(d) *Directly or indirectly*, when used in reference to activities or investments of an organization, means activities or investments of the organization or of any subsidiary of the organization.

(e) *Eligible country* means any country:

(1) For which an allocated transfer risk reserve is required pursuant to §211.43 of this part and that has restructured its sovereign debt held by foreign creditors; and

(2) Any other country that the Board deems to be eligible.

(f) An Edge corporation is *engaged in banking* if it is ordinarily engaged in the business of accepting deposits in the United States from nonaffiliated persons.

(g) *Engaged in business* or *engaged in activities* in the United States means maintaining and operating an office (other than a representative office) or subsidiary in the United States.

(h) *Equity* means an ownership interest in an organization, whether through:

(1) Voting or nonvoting shares;

(2) General or limited partnership interests;

(3) Any other form of interest conferring ownership rights, including warrants, debt, or any other interests that are convertible into shares or other ownership rights in the organization; or

(4) Loans that provide rights to participate in the profits of an organization, unless the investor receives a determination that such loans should not